

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 15-14940  
Non-Argument Calendar

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D.C. Docket No. 3:14-cr-00015-KKD-SRW-7

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KESHIA LANIER,  
a.k.a. Keshia Gary,  
a.k.a. Keshia Williams,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Alabama

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Before WILLIAM PRYOR, ROSENBAUM, and FAY, Circuit Judges.

BY THE COURT:

Keshia Lanier pled guilty, pursuant to a written plea agreement, to one count of wire fraud, in violation of 18 U.S.C. § 1343 ("Count 18"), and one count of

aggravated identity theft, in violation of 18 U.S.C. § 1028A (“Count 74”). In exchange for her plea, the government agreed to dismiss the remaining counts in the indictment and to take certain actions at sentencing, such as moving for a guideline reduction for acceptance of responsibility, provided that Lanier complied with the terms of the plea agreement.

In the plea agreement, Lanier represented that she understood restitution was mandatory for Counts 18 and 74, with the amount to be determined at sentencing, and that she was subject to the forfeiture allegations in the superseding indictment. Lanier stated that she understood that the district court would resolve forfeiture issues at sentencing or another hearing. She also agreed to forfeit her right to all assets or substitute assets that were subject to forfeiture. And she “agree[d] to waive any constitutional challenges to the forfeiture, including any challenges under the Eighth Amendment to the United States Constitution.”

Notably, the plea agreement included a sentence appeal waiver. The waiver states that Lanier “expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence” and that she “further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the conviction and sentence in any post-conviction proceeding.” Under the waiver, Lanier retained the right to appeal on grounds of ineffective assistance of

counsel and prosecutorial misconduct or if the government appealed the sentence. Lanier, her attorney, and the prosecutor signed the plea agreement.

Lanier consented to have a magistrate judge conduct her plea colloquy. During the plea colloquy, the magistrate judge went over the terms of the plea agreement, including Lanier's waiver of her right to appeal. The magistrate judge explained that Lanier was, with certain exceptions, "completely giving up the right to appeal or in any way to attack the sentence imposed." The magistrate judge covered the exceptions to the waiver, reiterating that, other than these exceptions, Lanier was giving up her right to appeal her sentence. Lanier stated that she understood the terms of the plea agreement, including the appeal-waiver provision. The magistrate judge found that Lanier was aware of the consequences of her guilty plea, and that the plea was knowing and voluntary. Then the magistrate judge accepted the guilty plea and adjudicated Lanier guilty of Counts 18 and 74.

At sentencing, the district court calculated the guideline range for Count 18 to be 240 months in prison, the statutory maximum for that offense, to be followed by a consecutive term of 24 months in prison on Count 74. Notably, the district court refused to apply a reduction for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, based on the court's finding that Lanier had provided fraudulent documentation to her probation officer.

The district court sentenced Lanier to a total term of 180 months in prison (156 months on Count 18 followed by 24 months on Count 74). The court also announced its intention to order Lanier to pay restitution in the amount of \$5,811,406, and to enter an order of forfeiture against Lanier in the form of a money judgment equal to the restitution amount. Lanier objected to the proposed orders, and the court directed the parties to file briefs on the matter.

Lanier filed a brief in which she contended that the orders of restitution and forfeiture, and, more specifically, judicial determination of the amount of restitution and forfeiture, would violate the Sixth Amendment, as there had been no jury determination on the issue. Ultimately, the district court ordered Lanier to pay \$5,811,406 in restitution and entered a forfeiture money judgment against her in the same amount.

Lanier now appeals her sentence and the restitution and forfeiture orders. She raises the following three issues: (1) the district court's restitution and forfeiture orders violated her Sixth Amendment rights because the amounts were not found by a jury or agreed to in the plea agreement; (2) the court erred in refusing to give her a reduction for acceptance of responsibility; and (3) the court erred in applying an enhancement for the number of victims. The government has moved to dismiss Lanier's appeal on the basis of the sentence appeal waiver in her plea agreement. Lanier has not responded to the government's motion to dismiss.

We review the validity of a sentence appeal waiver *de novo* and will continue to enforce the waiver if it was made knowingly and voluntarily. *United States v. Johnson*, 541 F.3d 1064, 1066 (11th Cir. 2008); *United States v. Bushert*, 997 F.2d 1343, 1350-51 (11th Cir. 1993). To establish that the waiver was made knowingly and voluntarily, the government must show either that (1) the district court specifically questioned the defendant about the waiver during the plea colloquy, or (2) the record makes clear that the defendant otherwise understood the full significance of the waiver. *Id.* An appeal waiver includes the waiver of the right to appeal difficult or debatable legal issues or even blatant error. *United States v. Grinard-Henry*, 399 F.3d 1294, 1296 (11th Cir. 2005).

Here, Lanier's appeal waiver in her plea agreement is enforceable. The magistrate judge specifically questioned Lanier about her waiver during the plea colloquy, and Lanier indicated that she understood that she was waiving her right to appeal except in limited circumstances. *See Johnson*, 541 F.3d at 1066. Therefore, we enforce the waiver according to its terms.

When we do so, we conclude that Lanier's challenges on appeal are barred by the appeal waiver. First, Lanier does not raise any challenge within one of the waiver's exceptions. Specifically, she does not argue that her counsel was ineffective or that the prosecutor committed misconduct, and the government has

not appealed her sentence. So her challenges to the district court's application of the sentencing guidelines plainly are barred by the terms of the waiver.

Second, the circumstances show that Lanier understood that she was giving up the right to challenge the restitution and forfeiture orders through the plea agreement. Restitution is a component of a defendant's sentence, and Lanier's plea agreement made clear that restitution was mandatory and would be determined at sentencing. *See United States v. Okoye*, 731 F.3d 46, 50 (1st Cir. 2013) (holding that appeal waiver barred appeal of restitution order, and collecting similar cases); *see also Johnson*, 541 F.3d at 1067 (suggesting that "restitution is part of a criminal defendant's waiver"). Accordingly, by waiving the right to appeal her sentence, Lanier also waived her right to appeal restitution.

As to forfeiture, we have stated that "[i]t is beyond doubt that criminal forfeiture is part of a defendant's sentence." *United States v. Gilbert*, 244 F.3d 888, 924 (11th Cir. 2001); *see Libretti v. United States*, 516 U.S. 29, 38-39, 116 S. Ct. 356, 363 (1995) ("Forfeiture is an element of the sentence . . ."). That fact alone may not be sufficient to show that Lanier knowingly and voluntarily waived her right to appeal the forfeiture order, but Lanier's plea agreement otherwise makes clear her understanding that she was waiving her right to appeal the forfeiture on constitutional grounds. In the plea agreement, Lanier expressly agreed to forfeit her right to all assets or substitute assets that were subject to



forfeiture and “to waive any constitutional challenges to the forfeiture, including any challenges under the Eighth Amendment to the United States Constitution.” Accordingly, we conclude that her current challenge to the forfeiture, on Sixth Amendment grounds, has been waived.

The government’s motion to dismiss is **GRANTED**.<sup>1</sup>

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<sup>1</sup> We note in passing that we have held that the rule announced by the Supreme Court in *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000)—“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt”—does not apply to restitution orders. *Dohrmann v. United States*, 442 F.3d 1279, 1281 (11th Cir. 2006). Moreover, the Supreme Court has held that “the right to a jury verdict on forfeitability does not fall within the Sixth Amendment’s constitutional protection.” *Libretti*, 516 U.S. at 49, 116 S. Ct. at 367-68. The circuit courts to have addressed Lanier’s forfeiture argument have concluded that *Libretti* continues to control, notwithstanding *Southern Union Co. v. United States*, 132 S. Ct. 2344 (2012), and *Apprendi*. See *United States v. Sigillito*, 759 F.3d 913, 934-36 (8th Cir. 2014); *United States v. Simpson*, 741 F.3d 539, 560 (5th Cir. 2014); *United States v. Phillips*, 704 F.3d 754, 769-70 (9th Cir. 2012).